

BEFORE THE
BOARD OF ACCOUNTANCY
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

KENNETH MARK GREENE

Certified Public Accountant
Certificate No. 69160

Respondent.

Case No. AC-2007-14

OAH No. L2007030319

PROPOSED DECISION

This matter was heard by Mark E. Harman, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California, on January 31, 2008.

Carol Sigmann (Complainant) was represented by Michel W. Valentine, Deputy Attorney General. Kenneth Mark Greene (Respondent) was represented by Stephen P. Jones, Attorney at Law.

The parties stipulated to the truth of all factual allegations in the Accusation, with the one exception that, rather than a felony, Respondent has been convicted of a misdemeanor offense. Respondent offered evidence to mitigate the discipline to be imposed. The record was closed, and the matter was submitted for decision on January 31, 2008.

FACTUAL FINDINGS

1. Complainant brought the Accusation solely in her official capacity as the Executive Officer of the California Board of Accountancy (Board), Department of Consumer Affairs, on December 15, 2006.

2. On May 12, 1995, the Board issued Certified Public Accountant (CPA) Certificate no. 69160 to Respondent. The Certificate was last renewed on September 1, 2006, in an inactive status and without compliance with the continuing education requirements, and will expire on August 31, 2008, unless renewed.

3. On May 18, 2006, in the United States District Court, for the District of California, in case no. CR-06-460-SS, Respondent entered a plea of guilty to a misdemeanor violation of Title 26 United States Code section 7207 (submitting a false document to the Internal Revenue Service (IRS)). On December 11, 2007, the District Court entered a

judgment of conviction and placed Respondent on probation for one year under certain terms and conditions, including payment of a \$10,000 fine and compliance with the reporting requirements of the probation office. The sentencing judge stated that Respondent posed little threat to the public safety and hoped Respondent could put the matter behind him. Respondent's conviction is substantially related to the qualifications, functions, and duties of a certified public accountant.

4. The facts and circumstances underlying Respondent's conviction are as follows. Respondent went to work for Haas Automation, Inc. (Haas) as accounts payable manager in 2001, and was made corporate controller in 2002 when the previous controller, John Phillips (Phillips), resigned. In 2003, for the tax year ending December 31, 2002, Respondent was instructed by Denis Dupuis (Dupuis), Haas's general manager and Respondent's supervisor, to send a Form 1099-C to Phillips in the amount of \$314,704, which amount reflected forgiveness of debt on a loan which Haas had made to Phillips while Phillips was still a Haas employee. After receiving the Form 1099-C, Phillips telephoned Respondent and threatened to inform the IRS of Haas's ongoing tax evasion scheme. Respondent told Dupuis about this conversation with Phillips. Dupuis ordered Respondent to amend the Form 1099-C to reflect forgiven debt of only \$3,147, instead of the actual debt that had been cancelled by Haas. Respondent did so, and the false and fraudulent Form 1099-C was forwarded to the IRS.

5. On April 10, 2003, IRS agents served a search warrant at Haas. They also interviewed Respondent at his home. From that moment, Respondent was open and honest with these IRS agents regarding his involvement with the fraudulent Form 1099-C, as well as what he knew about a larger scheme of federal tax evasion perpetrated by Haas, its owner, Gene Haas, Dupuis, and two Haas suppliers. Respondent cooperated with these agents, providing useful information that remained consistent over a four-year period about the roles of various Haas employees and outside professionals. Respondent was able to corroborate information that Phillips had provided to these agents. Respondent was the only civilian witness called before the grand jury proceedings, which led to indictments against Gene Haas, Dupuis, and the two suppliers. Thus, although Respondent was not a key player in the underlying multi-million dollar tax fraud scheme, he was the key to the house of cards falling on the defendants' strategy of "circle the wagons." After these defendants learned that Respondent was cooperating with the government, they each came forward, one by one, and every one of them pleaded guilty. Gene Haas paid over \$70 million in restitution as part of his plea agreement.

6. Before working for Haas, Respondent did public accounting. He did not like the seasonal aspect of the work, and he was disillusioned by clients who asked him to misrepresent things and then fired him when he did not cooperate. He went to work for Haas thinking he would be able to work year-round for a quality multi-million dollar company. He learned over a period of time that Haas was defrauding the government. He got into arguments with, and felt overworked and pressured by, Haas's management, but he continued working because he was afraid of being humiliated and losing his "first job where I had a pension plan." Although he was not willing to turn in his employer, once the federal

agents contacted him, he decided not to cover up for Haas. Respondent does not want such misconduct and cover-up to happen again. He said he would not go along with a client's or employer's wrongdoing in the future. He said he would try to stop it, and if he could not, then he would quit his job.

7. Respondent is currently the controller of a janitorial management services company, a position for which he is not required to be licensed. His duties include accounts payable/receivable, insurance, and payroll. The company's books and tax returns are prepared by an outside CPA.

8. Respondent is single, but he provides some support to his girlfriend and her seven children. He helps coordinate a program to assist employees of the company where he works who are in financial or other trouble.

9. Complainant incurred investigation costs of \$1,456.90, and incurred prosecution costs in the sum of \$4,517.75 for legal services provided by the Department of Justice (DOJ), for total costs of \$5,974.65. The Board's investigation costs, established by its certification of costs, are reasonable. In support of the certification of prosecution costs, Deputy Attorney General Valentine submitted his declaration, which made reference to an Exhibit A attachment entitled "Matter Time Activity by Professional Type." However, an Exhibit A was not attached to this declaration. The certification of prosecution costs, therefore, lacked documentation of the specific tasks and number of hours worked on each task to reach a total expenditure of 23 hours for attorney services and 8.75 hours for legal assistant services. Drawing reasonable inferences from the legal work that needed to have been done (drafting of the accusation and other pleadings; the review of documents; communications with the client and opposing counsel), and the work that did not need to have been done (since Respondent had stipulated to the allegations in what was essentially a document case, the preparation of witnesses was not required), the reasonable costs attributable to the services of the DOJ are determined to be 12 hours at \$158 per hour for attorney services, plus 7.75 hours of legal assistant services at \$101 per hour (this amount covers all DOJ billings for the 2006/2007 fiscal year), or \$2,678.75, for a total of \$4,135.65.

LEGAL CONCLUSIONS

1. Business and Professions Code¹ section 5100, in pertinent part, authorizes the Board, after notice and hearing, to suspend or revoke any permit or certificate for unprofessional conduct, which may include, but is not limited to: "(a) Conviction of any crime substantially related to the qualifications, functions and duties of a certified public accountant or public accountant. [¶] . . . [¶] (j) Knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information."

¹ All statutory references are to the Business and Professions Code, unless specified otherwise.

2. Cause exists to suspend or revoke Respondent's certificate as a certified public accountant pursuant to section 5100, subdivision (a), for conviction of a crime substantially related to the qualifications, functions, and duties of a certified public accountant, by reason of factual finding numbers 3 and 4.

3. Cause exists to suspend or revoke Respondent's certificate as a certified public accountant pursuant to section 5100, subdivision (j), for preparing and disseminating a false Form 1099-C, by reason of factual finding number 4.

4. Respondent has presented substantial evidence in mitigation of his misconduct, as well as evidence of his rehabilitation, as set forth in factual finding numbers 5 through 8. It has been five years since the acts leading to Respondent's conviction. Even though his conviction is relatively recent, he first agreed to plea to the criminal charge in May 2004. Most significantly, Respondent provided consistent and helpful information over a four-year period in which he cooperated with government agents in the prosecution of the principals of a much larger crime. This required courage and endurance. It also demonstrates a change in attitude from that which existed at the time of the commission of Respondent's criminal acts. The sentencing judge agreed to a downward departure when sentencing Respondent based on his cooperation with the government. The judge found that Respondent posed little threat to the public safety, and expressed hope that Respondent could put the matter behind him; nevertheless, a one-year probation, accompanied by a short period of actual suspension, is an appropriate penalty, and provides a method to allow the Board to monitor Respondent's continuing rehabilitation efforts during the period of his criminal probation.

5. Cause exists pursuant to section 5107, subdivision (a), to order Respondent to reimburse the Board the sum of \$4,135.65 as its reasonable costs of investigation and prosecution in this matter. (Factual finding number 9.)

ORDER

Certified Public Accountant License No. 69160 issued to Respondent, Kenneth Mark Greene, is suspended for one year pursuant to legal conclusion numbers 1 through 4; however, the suspension is stayed and Respondent is placed on probation for one year upon the following terms and conditions:

1. **Actual Suspension:**

Certified Public Accountant License No. 69160 issued to Respondent is suspended for 45 days. The term of Respondent's suspension shall begin on the effective date of this decision and order and shall continue day-to-day thereafter. During the period of suspension, Respondent shall engage in no activities for which certification as a Certified Public Accountant or Public Accountant is required as described in Business and Professions Code, Division 3, Chapter 1, Section 5051.

2. Obey All Laws

Respondent shall obey all federal, California, and other states' and local laws, including those rules relating to the practice of public accountancy in California.

3. Submit Written Reports

Respondent shall submit, within 10 days of completion of the quarter, beginning with the first quarter following the effective date of the Decision, written reports to the Board on a form obtained from the Board. Respondent shall submit, under penalty of perjury, such other written reports, declarations, and verification of actions as are required. These declarations shall contain statements relative to Respondent's compliance with all the terms and conditions of probation. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

4. Personal Appearances

Respondent shall, during the period of probation, appear in person at interviews/meetings as directed by the Board or its designated representatives, provided such notification is accomplished in a timely manner.

5. Comply With Probation

Respondent shall fully comply with the terms and conditions of the probation imposed by the Board and shall cooperate fully with representatives of the California Board of Accountancy in its monitoring and investigation of the Respondent's compliance with probation terms and conditions.

6. Practice Investigation

Respondent shall be subject to, and shall permit, a practice investigation of the Respondent's professional practice. Such a practice investigation shall be conducted by representatives of the Board, provided notification of such review is accomplished in a timely manner.

7. Comply With Citations

Respondent shall comply with all final orders resulting from citations issued by the California Board of Accountancy.

8. Tolling of Probation for Out-of-State Residence/Practice

In the event Respondent should leave California to reside or practice outside this state, Respondent must notify the Board in writing of the dates of departure and

return. Periods of non-California residency or practice outside the state shall not apply to reduction of the probationary period, or of any suspension. No obligation imposed herein, including requirements to file written reports, reimburse the Board costs, and make restitution to consumers, shall be suspended or otherwise affected by such periods of out-of-state residency or practice except at the written direction of the Board.

9. Violation of Probation

If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

10. Completion of Probation

Upon successful completion of probation, Respondent's license will be fully restored.

11. Ethics Course/Examination

Respondent shall take and pass with a score of 90 percent or better a Board approved ethics examination within one year of the effective date of the Board's final decision.

If Respondent fails to pass said examination within the time period provided or within two attempts, Respondent shall so notify the Board and shall cease practice until Respondent takes and successfully passes said exam, has submitted proof of same to the Board, and has been notified by the Board that he may resume practice. Failure to pass the required examination no later than 100 days prior to the termination of probation shall constitute a violation of probation.

Notwithstanding any other provision of this probation, failure to take and pass this examination within five years of the effective date of this order constitutes a separate cause for discipline of Respondent's license.

12. Cost Reimbursement

Respondent shall reimburse the Board \$4,135.65 for its investigation and prosecution costs. The payment shall be made in equal monthly payments of \$375 each, with the first installment due on the 30th day of the first full month after the effective date of the Board's final decision, and continuing thereafter each month for

10 additional monthly payments, the final payment of \$385.65 being due before probation is scheduled to terminate.

13. Notification to Clients/Cessation of Practice

While actually suspended from practice, Respondent shall comply with procedures provided by the California Board of Accountancy or its designee regarding notification to, and management of, clients, if any.

DATED: March ____, 2008

MARK E. HARMAN
Administrative Law Judge
Office of Administrative Hearings